

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
PBI, LLC)	File No.: EB-11-DL-0058
)	NAL/Acct. No.: 201232500005
Licensee of Stations KDDD(AM) and KDDD-FM)	Facility ID No.: 74311
)	FRN: 0015162472
Dumas, TX)	
)	

FORFEITURE ORDER

Adopted: March 1, 2013

Released: March 1, 2013

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (Order), we issue a monetary forfeiture in the amount of eight thousand dollars (\$8,000) to PBI, LLC (PBI), licensee of Stations KDDD(AM) and KDDD-FM, in Dumas, Texas, for willful and repeated violation of Section 11.35(a) of the Commission's rules (Rules).¹ The noted violations involved PBI's failure to (1) maintain operational emergency alert system (EAS) equipment, and (2) keep records indicating why EAS tests were not received.

II. BACKGROUND

2. On July 5, 2012, the Enforcement Bureau's Dallas Office (Dallas Office) issued a Notice of Apparent Liability for Forfeiture and Order (NAL)² to PBI for violations of Section 11.35(a) of the Rules. PBI submitted a response to the NAL admitting that it was "negligent in maintaining proper EAS requirements and procedures," and requesting a reduction of the proposed \$8,000 forfeiture, because it "does not have sufficient funds to remit the entire penalty."³ PBI also certified that the EAS equipment for Stations KDDD(AM) and KDDD-FM was fully operational on July 31, 2012.⁴

III. DISCUSSION

3. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),⁵ Section 1.80 of the Rules,⁶ and the

¹ 47 C.F.R. § 11.35(a).

² *PBI, LLC*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 7569 (Enf. Bur. 2012). A comprehensive recitation of the facts and history of this case can be found in the NAL and is incorporated herein by reference.

³ Letter from Darrell Wait and Darren Stallwitz, Partners, PBI, LLC, to the Dallas Office, South Central Region, Enforcement Bureau at 1 (July 31, 2012) (on file in EB-11-DL-0058) (*NAL Response*).

⁴ *Id.* at 2.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

*Forfeiture Policy Statement.*⁷ In examining PBI's response, Section 503(b)(2)(E) of the Act requires that the Commission take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁸ As discussed below, we have considered PBI's response in light of these statutory factors, and find that a reduction of the forfeiture is not warranted.

4. Section 11.35(a) of the Rules states that all "EAS Participants are responsible for ensuring that EAS Encoders, EAS Decoders and Attention Signal generating and receiving equipment used as part of the EAS are installed so that the monitoring and transmitting functions are available during the times the stations and systems are in operation. Additionally, EAS Participants must determine the cause of any failure to receive the required tests or activations specified in § 11.61(a)(1) and (a)(2). Appropriate entries indicating reasons why any tests were not received must be made in the broadcast station log."⁹ It is undisputed that PBI's EAS equipment was not fully operational on August 16, 2011 and that it had no records of any EAS tests being received after October 30, 2008. Thus, based on the evidence before us, we find that PBI willfully and repeatedly violated Section 11.35(a) of the Rules¹⁰ by failing to ensure the operational readiness of the EAS equipment for Stations KDDD(AM) and KDDD-FM, and failing to explain in station logs why EAS tests were not received.

5. PBI requests reduction of the proposed forfeiture because it asserts that it is unable to pay the forfeiture. With regard to an individual or entity's inability to pay claim, the Commission has determined that, in general, gross revenues are the best indicator of an ability to pay a forfeiture.¹¹ Based on the financial documents provided by PBI, we conclude that its gross revenues are sufficient to pay the forfeiture.¹² Therefore, we decline to reduce the \$8,000 forfeiture on these grounds. However, PBI also requested the opportunity to make installment payments on the forfeiture. PBI may request installment payments as described in paragraph 8 below.

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Commission's rules, PBI, LLC **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eight thousand dollars (\$8,000) for violations of Section 11.35(a) of the Commission's rules.¹³

7. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Forfeiture Order.¹⁴ If the forfeiture is

⁷ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ 47 C.F.R. § 11.35(a).

¹⁰ 47 C.F.R. § 17.57.

¹¹ See *PJB Communications of Virginia, Inc.*, Forfeiture Order, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, Forfeiture Order, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, Forfeiture Order, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

¹² The forfeiture amount falls within the percentage range that the Commission has previously found acceptable. See *supra* note 11.

¹³ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 11.35(a).

¹⁴ 47 C.F.R. § 1.80.

not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.¹⁵ PBI, LLC shall send electronic notification of payment to SCR-Response@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁶ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

8. Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁷ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

9. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by both First Class Mail and Certified Mail, Return Receipt Requested, to PBI, LLC at P.O. Box 396, Dumas, TX 79029.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau

¹⁵ 47 U.S.C. § 504(a).

¹⁶ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹⁷ See 47 C.F.R. § 1.1914.